89-543 (2)

Supreme Court, U.S.
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JUL 31 1989
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CLERK

No. _____

IN THE SUPREME COURT
OF THE UNITED STATES
OCTOBER TERM 1989

CHARLES N. SLAYTON,

Petitioner,

vs.

BECHTEL POWER CORPORATION;
SOUTHERN CALIFORNIA EDISON
COMPANY, A Corporation;
BECHTEL CONSTRUCTION COMPANY,
INC.,

Respondents.

On Appeal from the Supreme Court of the
State of California

APPENDICES TO PETITION FOR WRIT OF CERTIORARI VOLUMES I AND II

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59 pp

PETITION FOR WRIT OF CERTIORARI
APPENDICES VOLUMES I AND II
TOPICAL INDEX

APPENDIX B

APPENDIX A
0ORDER DENYING REVIEW AFTER JUDGMENT BY THE COURT OF APPEAL 1
APPENDIX B
NOT TO BE PUBLISHED IN OFFICIAL REPORTS 2
FACTUAL AND PROCEDURAL BACKGROUND..... 3
THE "P" NUMBER INCIDENT 6
VEALEY'S REDUCTION TO JOURNEYMAN AND LAYOFF 8
VEALEY'S NUCLEAR SAFETY CONCERN 9
EXIT INTERVIEW WITH VEALEY 10
BECHTEL'S INVESTIGATION; SLAYTON'S TERMINATION; VEALEY'S REHIRE; AND SUBSEQUENT EVENTS... 10
SLAYTON'S TESTIMONY 13
MOLNAR'S TESTIMONY..... 17
VEALEY'S TESTIMONY 21
REINSCH'S TESTIMONY..... 24
GEORGE'S TESTIMONY 25
CAZARES'S TESTIMONY 27
MAISU'S TESTIMONY..... 28

ANALYSIS 30
APPENDIX C
DISPOSITION..... 43
APPENDIX D
AMENDMENT VII
UNITED STATES CONSTITUTION..... 44
0
CALIFORNIA CODE OF CIVIL
PROCEDURE §629..... 44
APPENDIX E
CALIFORNIA CODE OF CIVIL
PROCEDURE §659..... 47
APPENDIX F
AMENDMENT V
UNITED STATES CONSTITUTION..... 49
APPENDIX G
AMENDMENT XIV
UNITED STATES CONSTITUTION..... 50
SECTION 1 50
SECTION 2 50
SECTION 3 51
SECTION 4 51
SECTION 5 51
APPENDIX H
Foley v. Interactive Data 53
APPENDIX I
CALIFORNIA CODE OF CIVIL
PROCEDURE §630..... 54

APPENDIX A

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
4th District, Division 1, No. D006566
S009470

IN THE SUPREME COURT
STATE OF CALIFORNIA

IN BANK

Supreme Court
FILED
MAY 3, 1989
Robert Wandruff Clerk

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Deputy

CHARLES N. SLAYTON
v.
BECHTEL POWER CORPORATION et al.
Appellant's petition for review DENIED.

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Chief Justice
Received
MAY 5, 1989

Received
FEB 17 1989

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

COURT OF APPEAL

FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

FILED
Stephen M. Kelly, Clerk
FEB 16 1989
Court of Appeal
Fourth District

CHARLES N. SLAYTON,

Plaintiff and Appellant,

v.

BECHTEL POWER CORPORATION et al.,

Defendants and Respondents.

D006566

(Super. Ct. No. N27595)

APPEAL from a judgment of the Superior Court of San Diego County, Terry B. O'Rourke, Judge. Affirmed.

Charles N. Slayton sued Bechtel Power Corporation for breach of contract and breach of the covenant of good faith and fair dealing and received a $1,052,331 jury verdict which included

$600,000 for punitive damages. He now appeals the trial court's grant of judgment notwithstanding the verdict and order granting a new trial. Because there is no substantial evidence Bechtel wrongfully terminated Slayton so as to support the jury verdict, we affirm the judgment notwithstanding the verdict and need not address the grant of new trial. (**Code Civ. Proc., §629.**)

FACTUAL AND PROCEDURAL BACKGROUND

Bechtel was the general contractor for Southern California Edison Company (Edison), a licensee of the San Onofre nuclear power plant. In the Bechtel management hierarchy pertinent to this case, Edward Molnar was vice president and manager of construction, who supervised project superintendent Dick George, who in turn supervised swing shift superintendent Charles Slayton. Under Slayton were general foreman Charles Cazares, followed by welding foreman William Vealey.

San Onofre Unit One, where the incidents involved in this case occurred, was shut down from February 1982 to November 1984 to upgrade the plant to earthquake standards. The plant was on a return-to-service outage, which meant the construction personnel were working on the plant to complete work required by the Nuclear Regulatory

Commission (NRC) to allow the plant to be relicensed and restarted.

Bechtel's procedures required a welder to mark his "P" number adjacent to a weld after finishing his work.[1] A "P" number is a unique identifier, like a social security number, of a qualified welder and is only issued once. If a welder did not weld for a considerable length of time, he could lose his certification; or if his work did not meet requirements, he could be terminated, retrained, or lose his qualifications. The identification of a welder who had done a particular weld could be traced based on various documents (including a WR6 form, defined below), as well as by the "P" number on the weld. The "P" number notation on the weld was a procedural requirement, used as an inspection device, and the number was painted over after the pipe support[2] was completed, usually about five to seven days after the weld had been accepted through the various levels of inspection. Thus, the "P" number mark on the weld was a temporary, not permanent, record of a welder's identity.

1) Bechtel's written procedure stated: "The welder will place his symbol adjacent to any weld he performs welding operations on. He shall use a vibra-etch, felt marker or paint stick for carbon steel. He shall use a vibra-etch marker for stainless steel."

2) A pipe support (also called a hanger) is a device that holds up the piping on the plant, and its purpose is to hold the piping in place and protect it from having too much movement in the event of an earthquake.

The permanent record of a welder's identity was contained in various written documents, including the WR6 form. A WR6 form is a weld withdrawal form, allowing a welder to obtain the material (i.e. welding rods) to do the welding. When a welder went to the rod room to withdraw welding rod, the rod room attendants used his "P" number to trace his certification to determine he was a qualified welder at the time, and then issued him the appropriate rod. The WR6 form identified the welder, his "P" number, the date, time, what type of rod was withdrawn, and when the rod was returned. The rod room attendants (who, in the incident involved here, were Art Taylor and Al Strikeleather) were also field welding engineers responsible for issuing welding papers, inspecting and approving welds, checking welders' certifications, and making sure everything was done according to procedure.

The term "buying off" a weld refers to the process of accepting or rejecting it by a quality inspector. When a craftsman completed welding on a pipe support, the welding foreman would inspect it. The welding foreman would check to see that the weld was the right size, that it had been cleaned, and that all the paperwork requirements had been met so it could be turned over to the welding engineer for the next step of inspection. The welding engineer would check to see that the welding had been done by a qualified welder, that all the

paperwork was in order, and that the welding met the requirements of the project. After the welding engineer signed off on the weld, if it was a safety related weld, it would go to a quality control inspector, who would in turn sign it off. The process was then complete, and the pipe support could be painted. At each inspection level, the inspector would verify that the welder had put his "P" number adjacent to the weld.

The "P" number incident

On August 5, 1984,[3] Slayton was given a welding package from field welding engineer Taylor consisting of a manila folder with documents in it, and a sticker-type note stating, "Welds O.K. — needs 'P' number." Slayton gave the welding package to general foreman Cazares, and told him to have welding foreman Vealey go to the rod room to determine who had drawn welding rod on that support. Vealey and Cazares went to the rod room, but were unable to find the welding papers. When Cazares told Slayton they could not find the date in the welding room, Slayton ordered a second, more thorough search with the assistance of the rod room attendant. Taylor and Vealey looked through the files again, but were unsuccessful. After the

3) All subsequent references to dates are to the year 1984, unless otherwise indicated.

second search, Slayton requested Vealey inspect the weld and, if the workmanship was compatible with his own, to place his "P" number on it.

Cazares testified that after they could not find the rod papers, he essentially deferred to Vealey's expertise to handle the matter, since he basically left all the welding matters up to Vealey. Vealey told Cazares he could go ahead and "draw rod" so it would validate his "P" number on the support weld. Because Vealey had been a welder for Bechtel for a long time and he knew all about welding, Cazares asked him if he could do that; and Vealey said sure, there was no problem, he had done it before. Vealey falsified the welding rod papers (i.e., the WR6 form) to reflect that he had performed the weld in question. Cazares and the rod room attendants (Taylor and Strikeleather) knew Vealey was falsifying the weld papers, and Strikeleather signed the WR6 form and issued the rod to Vealey. Slayton, however, did not know Vealey had falsified the papers, and he had not told Vealey to do so.[4]

4) Cazares testified he did not know if he told Slayton about Vealey's drawing of the rods, although he usually reported everything to Slayton. According to Vealey, he told both Cazares and Slayton he could draw rods on the pipe support and put his welder's identification number on it even though he did not do the weld. However, Slayton testified he first learned Vealey had falsified the rod documents after Vealey was fired on August 10; he did not order Vealey to falsify the documents; and Vealey did not tell him he was going to falsify them.

On August 6, the weld was inspected and accepted by field welding engineer Strikeleather. The weld was signed off as complete by quality control on August 14.

Vealey's reduction to journeyman and layoff

Since the time of Vealey's promotion to welding foreman in July 1984, Slayton had been dissatisfied with Vealey's performance, complaining that he did not inspect all the welds, nor properly inspect the welds, and he had discussed the matter with Vealey. On August 8, Slayton reduced Vealey from foreman to journeyman after a line rupture occurred in a weld Vealey had failed to inspect. According to Slayton, Vealey threatened that if he was not reinstated as a foreman he would place a complaint in the "NRC drop box" (defined below). Angered by this attempt at blackmail, Slayton put Vealey on the layoff list, and on August 10 Vealey was laid off based on a reduction in force.[5]

5) In contrast, project superintendent George testified he instructed Slayton to reduce Vealey to a journeyman and then lay him off because of Vealey's failure to inspect the weld. Thus, according to George's testimony, Vealey's layoff was not a response to a threat to Slayton.

Vealey's nuclear safety concern

Edison maintained a drop box for employees to submit complaints——called "Nuclear Safety Concern Request for Independent Review," which allowed employees to express any safety concerns about the plant. On August 10, Vealey submitted a nuclear safety concern which described the "P" number incident as follows. When they could not find the rod papers to identify the welder, he jokingly said to his supervisor, "I can draw rod on the pipe support number and even though I won't weld I will then put my welders identification number on it"; nothing more was said at that time. A few hours later he stopped to speak with Slayton, and was told to go ahead with what his supervisor and he had spoken about earlier. Vealey asked Slayton if Slayton knew what he was talking about, and Slayton said it was an opportunity to get an easy completion. Vealey did what he was ordered to do; he went into the rod room and filled out a WR6 for the weld signed by himself for rod he did not weld; turned the rod back in; and then went into containment to put his welder's identification number on the support even though he had not welded. What came to his mind was that the NRC has prosecuted people for falsification of documentation relating to welding; and he did not want this to happen to him, as he was only following orders, and there have been numer-

ous improprieties perpetrated in the name of production.

Exit interview with Vealey

Bechtel's inter-office memorandum, dated August 10, summarized an exit interview with Vealey, conducted by James Voight of Bechtel's quality assurance department, as follows. Vealey stated Slayton is unfamiliar with mechanical specifications since his background is electrical; Slayton had no business running a job outside his discipline; he (Vealey) lost his job because of this lack of knowledge on Slayton's part; he is being made a scapegoat; and the stressing of the pipe was caused by overwelding by the day shift when they thought they discovered some undercut, and it was not caused by Vealey. Vealey commented that the night shift was under pressure and some falsification of documents, initiated at Slayton's direction, was performed to expedite the work. Vealey also requested Richard Reinsch, director of the quality assurance department, call him to discuss other improprieties.

Bechtel's investigation; Slayton's termination; Vealey's rehire; and subsequent events

On August 14, Slayton was relieved of his

duties pending an investigation of Vealey's allegations. An investigation was conducted by Bechtel's quality assurance department, and a report dated September 11 prepared by Reinsch was submitted to Edison, which summarized the investigation and its resolution, including the following items of information. Vealey volunteered (jokingly, according to Vealey) to draw rod and put his identification number on the weld. Slayton admitted he asked Vealey to inspect the weld and if it was acceptable to "adopt" it, but Vealey withdrew the weld rod on his own. On August 17, all swing shift foremen were interviewed to see if there was pressure from supervision that would compromise quality of work or accuracy of records, and none was reported. On August 18, a follow-up interview was conducted with Vealey regarding two other improprieties he had alleged, which after investigation were found to be unsubstantiated. On August 28, the weld papers for the true welder were found, and on August 31, the welding documentation corrected.[6]

6) An inspection report prepared in response to quality assurance instructions to void Vealey's "P" number mark indicates his number was not in fact marked on the weld, but rather the correct "P" number was already there. Vealey testified, however, he did place his number on the weld. Molnar, who made the decision to fire Slayton, testified even if he had known Vealey's "P" number had not actually been placed on the weld, it would not have influenced his decision to fire Slayton.

On August 30,[7] Slayton was terminated for misconduct by Bechtel management, and the NRC was informed of Vealey's allegation and the status of the investigation. On August 31, management met with Vealey to review the results of the investigation of his allegations and to offer him reemployment. On August 31, a training class was held for all field supervisory personnel on the welding documentation procedural violation incident and to reinforce the quality requirements.

At trial, Molnar testified Vealey was rehired because of concerns for his status as a whistleblower; and Slayton was fired because he directed Vealey to place his "P" number on a weld he did not do, in violation of a well-established procedure known to Slayton.

The rod room engineers were not terminated as a result of their knowledge of the incident with Vealey. General foreman Cazares was demoted to a journeyman.

Vealey was laid off for a reduction in force on December 21. When he was laid off, Vealey threatened to go to the NRC, based on his claim he was being laid off in retaliation for his whistleblowing in August. Bechtel made a business decision to resolve the ensuing legal dispute and avoid extended litigation by paying Vealey a cash settlement.

7) An exit interview document dates his termination as August 31.

Slayton's testimony

Slayton testified he knew about the rule which requires the welder who performs welding operations to place his "P" number adjacent to the work he performs. When he read the note from the field welding engineer which stated, "Welds O.K. —needs 'P' number," he interpreted that as meaning the engineer had accepted the weld for quality and he was merely informing Slayton it did not have a "P" number.

Slayton was interviewed by Bechtel manager Molnar, and he read Molnar a written statement in order to respond to Vealey's allegations, which explained the incident as follows:

When the second search for the welding papers proved unfruitful, Slayton considered various reasons why there might not be rod room documentation or a "P" number on the weld, and when seeking the advice of a field engineer, he was told, "No one makes an issue out of 'P' numbers."[8]

8) Specifically, Slayton's statement stated: "I began to rationalize why there was no weld documentation for this support in the rod room. I considered that there are in existence many, many pipe supports which were left in various stages of completion during the 1982/83 outage effort—the actual welding for this support may have completed during that time and there would not be any documentation in the rod room for that phase of work. I considered that there are numerous supports in existence which are being worked on that do not have welder symbols either because of omission by the welder or

Slayton understood that the visible "P" number displayed in the field was primarily a tool used to flag a welder whose weld quality is deficient and who needs quick attention; and welder traceability centered around weld papers, such as WR6 forms, not the "P" number on the pipe support. He rationalized that a welding foreman is a qualified pipe support welder who performs work on a pipe support by inspecting the work performed by the welders, and that the "P" number would be painted over very soon after inspection. Thus, he concluded the welder symbol was not documentation, but merely a convenience which in no way could affect documentation, the audit trail, or the quality of the weld. Further, in this specific case, the weld had already been "bought off" by the welding engineer, since

obliteration due to time. Also, numerous large bore pipe support packages are being passed back and forth between day and night shift. It is not uncommon to have in the order of four to six different welders perform work on a single support. When I examine large bore supports in the field, I don't normally see them 'peppered' with 'P' numbers. With these thoughts passing through my mind, I asked one of the field engineers 'how do we sell supports which were welded on in 1982 & 83, that do not have 'P' numbers?' The reply was 'no one makes an issue out of 'P' numbers.' I did not pursue this response in any further detail at this time, however, the answer that I was given is correct according to procedural weld acceptance criteria in both FC/QCM [Field Construction, Quality Control Manual] 19.21 and GP/QCI [General Procedure, Quality Control Instruction] 202."

the note on the package stated, "Welds O.K. —needs 'P' number."

This was the only case of a missing welder symbol he had encountered to date. There was still a slight procedural question in his mind regarding "generic inspection buy off" of welds without "P" numbers, but for the time being, he concluded the inspector should be accommodated. He had "every intention of resolving this question at the first opportunity." However, there was never the slightest question of quality in his mind when he asked Vealey to go and look at the welding on the pipe support and if he had no problem with the welding—i.e., if the workmanship was compatible with his workmanship—to place his "P" number on it. Slayton emphatically reiterated in his statement that he was totally convinced there had been no quality infractions on his shift caused by himself or any other person functioning with his knowledge.

Slayton testified that after he read Molnar the document, Molnar asked him if he had violated any procedure. Slayton responded he acknowledged the literal intent of the procedure that the welder himself place his symbol adjacent to the work, but the procedure had become vague and unclear due to an evolution of revisions, and the procedure was in need of attention and revision so as to establish the clear intent with respect to welding acceptance and the buy off of welds, without the "P" number be-

ing a requirement for inspection and buy off of welds. Molnar laughed at him.[9] At his deposition, Slayton acknowledged he deviated from the literal intent of the procedure, but at trial insisted he had not violated any procedure.

Slayton testified the field welding engineer who handed him the welding package did not explain precisely what he wanted. He was not sure the inspector wanted the "P" number of the welder who had actually done the welding, and Slayton believed it was not a requirement for acceptance of a weld.[10] He instructed Cazares to have Vealey put his "P" number on the weld in order to accommodate the field welding engineer. He denied he made the request in order to deceive the field engineer.

When he was suspended with pay on August 14, project superintendent George told him he had had a conversation with Molnar and Edison was involved, the matter had become very political, and until it was resolved, it was best to take him off the project.

9) Molnar denied that he laughed at Slayton, other than to make him feel at ease.

10) Slayton's assertion the "P" number notation was not a requirement for acceptance of a weld was premised on the fact that Bechtel's written procedures did not expressly refer to the "P" number notation when delineating the steps required for acceptance of a weld.

Slayton testified that, contrary to the statements in Vealey's nuclear concern request, he did not tell Vealey to go ahead with what his supervisor and he had spoken about earlier, nor did Vealey ask him if he knew what he was talking about.

Molnar's testimony

Molnar was the manager who made the decision to terminate Slayton. He was responsible for seeing that the project was completed on schedule, and he was aware that if it did not meet certain deadlines, penalties would be incurred. Molnar testified the "P" number procedure was a separate requirement from the requirement that the weld have structural integrity, and the safety qualities of a weld did not depend on whether there was a "P" number on it. The weld at issue in this case had appeared satisfactory. However, even if the weld was a structurally good weld, the failure to affix the welder's "P" number raised concerns regarding adherence to procedures.

The "P" number marked on the weld was also part of the weld "documentation," constituting a record of who did the weld, even though it was not permanent documentation. Molnar knew Slayton did not falsify or prepare the WR6 form; and he had no reason to doubt Slayton's position that he did not direct Vealey to do so.

He decided to discharge Slayton because he had instructed an individual to violate a known quality procedure; i.e., he gave instructions to Vealey to put his "P" number on a weld Vealey had not performed. Monlar did **not** fire Slayton based on a belief he had told Vealey to falsify the rod room records.

From Molnar's perspective, Slayton's instruction to Vealey started a chain of events which eventually led to several documents being filled out by inspectors in the inspection process with the wrong "P" number. The purpose of getting the "P" number put on the weld was so the quality people would accept the weld; and it was accepted because Slayton directed Vealey to put his "P" number on it. Instructing Vealey to put his "P" number on something he did not do was telling him to lie about a quality issue.

Slayton, as shift superintendent, had engineers to help him as far as packaging the work and had line organization foremen and general foremen of the various crafts to assist him in performing the work. The shift superintendent should have knowledge of the procedures and an ability to go and get the necessary knowledge for a procedure. It was not absolutely necessary the superintendent know everything about every procedure, since there were a great many procedures. They had a work packaging process which points out which

procedures are necessary, and in implementing them, individuals would need to know them, but he did not expect Slayton specifically or anyone else specifically to have known every nuance of every procedure.

However, regarding the "P" number procedure, he expected Slayton to know it since it was a long-standing and well-known rule the welder would identify his work with his "P" number next to the weld.

Based on an interview with Slayton and a review of some quality assurance department documents, Molnar concluded Slayton obviously understood the procedure regarding the application of the "P" number, and Slayton had directed Vealey to put his "P" number on the weld. During the interview with Molnar, Slayton would not take responsibility for doing anything wrong, rather he tried to explain why his action was not wrong. Molnar terminated Slayton because one, Slayton knew about the procedure and instructed Vealey to violate it; two, Slayton did not acknowledge the fact that a willful breaking of the procedure was wrong, but rather rationalized it was right, which is incompatible with the quality control process which depends on following procedures precisely and the integrity of the individuals involved; and three, Molnar was concerned about what message they would be sending to their employees and the public about

their adherence to the quality program.

Molnar testified no one at Edison or Bechtel told him to fire Slayton,[11] and Vealey never told him to fire Slayton.

Management had a meeting where they discussed how they were going to respond to the concerns raised by Vealey. The meeting did not involve any discussion as to the firing of Slayton. There was no discussion that management wanted to do an investigation before the NRC did an investigation; Bechtel's investigation would have proceeded and if the matter went to the NRC it would have been independent of what Bechtel would have done.[12] Although Molnar did not attend the meeting where Vealey was offered reemployment, Molnar participated in the decision and agreed to the rehire because, after advice from Bechtel's counsel, they were concerned about the whistleblower overtones and he determined it would be in the company's best interests to offer Vealey reemploy-

11) Dwight Nunn, a manager from Edison, corroborated that Edison did not recommend Slayton be fired, although Nunn agreed with the termination action taken by Bechtel.

12) Molnar testified he did not speak with the NRC about Bechtel's investigation; and he did not know, but the NRC may have been informed some other way.

ment.[13] If Vealey had not been a whistleblower, Molnar would not have agreed to rehire him. In evaluating Vealey's situation, Molnar knew he had broken rules, even if he did so under the direction of Slayton; on the other hand, a mitigating factor was the fact he had come forward and admitted his wrongdoing.

Vealey's testimony

When Cazares gave him the pipe support package which stated all welds were good and it needed a welder's identification number, Vealey inspected the weld and found it to be of excellent quality. Vealey testified he thought he was committing a crime by falsifying welding documents, but he did not tell Slayton he thought it was a crime, and he did not tell Cazares because Cazares already knew it was.

When asked if he had made a statement to Bechtel management that if he did not get his job back, he would go to the NRC, Vealey answered

13) Molnar responded, by letter dated September 4, to a letter from Vealey to Steve Bechtel, Jr. (Bechtel's chairman of the board), in which Vealey had complained about Slayton's laying him off and accused Slayton of ordering him to perform contrary to procedures. Molnar's responding letter stated Vealey's letter had been forwarded to him for response; he had met with construction, quality assurance, and project management; and it was his understanding Vealey's concerns had been addressed and resolved.

yes, he had made that statement to the quality assurance personnel, probably Voight and Reinsch. Upon further questioning, Vealey testified that during his exit interview (conducted by Voight) on August 10, he told them he had already put a complaint in the box, and if they did not inspect it, he would go to the NRC.

When shown a document recording the substance of his exit interview, containing his signature, Vealey acknowledged the report did not state that he threatened them with going to the NRC if he did not get his job back. When asked if he wanted to change his testimony, Vealey said no, he talked to the man for over an hour and he told him if his allegations were not investigated in a proper and timely manner, he would go to the NRC if he was not satisfied with their report. When asked if part of being satisfied with their report was for Slayton to be terminated, Vealey answered he never asked them to do that.

Vealey was interviewed by Bechtel quality assurance personnel, Reinsch and Larry Bajada, on August 18.[14] Vealey testified he told Reinsch at the interview he felt they were dragging their feet, and if they did not get moving he would go to the NRC. Also during that interview, Reinsch asked Vealey

14) Reinsch's report to Edison indicated Vealey was interviewed on August 18 by Bechtel qualilty assurance. Vealey testified he spoke with Reinsch around August 20, but before August 31.

whether or not he wanted Slayton's job, and Vealey answered no, it didn't pay enough. Vealey testified Reinsch's question was just a rhetorical question, Reinsch was not serious, and he and Reinsch are friends.

Sometime in August, Vealey did file a complaint with the NRC representatives who had an office on-site at the power plant, telling them he would feel much better if they were looking over Edison's and Bechtel's shoulder while his complaint was being investigated because otherwise he felt it would be whitewashed. Based on his phone conversation with the NRC representative, he knew Bechtel employees were informed of his complaint to the NRC, but he did not know if the NRC ever indicated it wanted to do its own investigation or would leave the investigation to Bechtel.

At a meeting on August 31 with Bechtel management, Vealey was informed of the results of the investigation of his nuclear safety concerns, was told Slayton had been terminated, and he was eligible for rehire. At another point in his testimony, after having his memory refreshed with his deposition testimony, Vealey stated he was not told at the August 31 meeting Slayton had been terminated, but was told "sometime in that time" period Slayton had been terminated. Vealey considered his August rehiring to be a deal—i.e., he was rehired and he was not to be discriminated against for his

past action of whistleblowing regarding the "P" number incident with Slayton.

Reinsch's testimony

Reinsch, whose father was a vice-chairman of Bechtel, was responsible for the quality assurance program at the plant, over which program he had hiring power, but he had no power to hire for Slayton's position. Reinsch testified he never offered Slayton's position to Vealey, and he had no authority to do so.

The quality assurance department was an "independent" department in the sense it was directed out of the Los Angeles division office rather than from the job site, so it was independent from any of the management at the site.

When Vealey's nuclear safety concern was placed in the drop box, his department commenced an investigation, and later Edison was also notified of the concern, and Edison's quality assurance department directed Reinsch to conduct an investigation. Specifically, Edison referred to a problem of "potential falsification of records" in the concern. Reinsch, corroborated by Edison's representative Nunn, testified the falsification of records issue pertained to anything related to the installation and inspection of the quality of the work—thus, it included the identification of the welder on the weld

as well as the preparation of the weld papers.

Quality assurance's investigation and report was not concerned with the issue of whether Slayton should be fired, but rather addressed how to ensure compliance with the procedural violations, and Reinsch made no recommendations about what should be done with Slayton. Reinsch was told by Bechtel manager Homer McCluskey to call Vealey and have him attend the August 31 meeting, during which they would summarize the results of the investigation and let him know he was eligible for rehire. At an earlier meeting, Reinsch and representatives of Edison had met with the NRC inspectors and informed them of the nuclear safety complaint, and the NRC representative had expressed concern about the employment security of people who point out nuclear safety problems. Reinsch asserted to the NRC inspector the employee was a participant in the procedural violations, and if it was up to him he felt he should not be reemployed, but the NRC inspector responded it was paramount to protect people who make nuclear safety concerns.

George's testimony

Project superintendent George, Slayton's direct supervisor, testified Molnar called him and told him that because there was a quality concern, he

wanted to send Slayton home with pay pending investigation of the matter, and George relayed the instruction to Slayton.

According to George, rod room attendant Strikeleather should not have issued the rod to Vealey if he knew Vealey was not going to do the weld, and his doing so would be in violation of procedures and misconduct.

If a welding engineer indicates a weld is okay but needs a "P" number, it could indicate the engineer had not continued with the inspection, and had not checked the quality of the weld. A note saying a weld is okay does not mean anything since the inspector has to sign his name to a document, and the inspection has to be closed out, including checking to see that the welder was qualified and certified to weld at that time. Thus, the note merely means the "P" number had to be on the weld before the inspection process could continue. However, the absence of the welder's symbol does not affect the physical quality or safety of the weld.

According to George, Slayton could have entered a note in the night shift log that they were unable to find the weld papers or unable to find who did the welding, and left it for the next shift to investigate. If they could not discover who performed the work, the appropriate procedure was to write a "nonconforming report" which would go to the quality control department and the engineer would

determine what corrective action to take.

Under no circumstances should someone who did not do the welding put their "P" number next to the weld. It was a violation of procedure for a superintendent to direct or authorize a welding foreman to put his "P" number adjacent to a weld he had not welded. When asked if it was a violation of procedure for a welding superintendent to request the welding foreman to put his "P" number on a weld he had not done, if he would have physically approved the weld, George testified it was hard to answer yes or no; but, yes, it would be against the procedure to authorize a welder to put his "P" number if he had not welded it; the superintendent had no authority to revise or alter any of the procedures, although he could have requested engineering to alter the procedure. That is, the supervisors must follow the procedures as they are written, and may not read between the lines; if they are in a position where they need to expound upon what is in the written procedure, they go to engineering and ask them to make the decision.

Cazares's testimony

General foreman Cazares had had conversations with Slayton about Vealey's job performance, and Cazares had warned Vealey that Slayton sooner or later was going to replace him or put him

back. Prior to Vealey's layoff by Slayton in August, at a social occasion Vealey told Cazares he knew how to make the powers at San Onofre toe the line, he had sued them once and after they found out what he knew, they gave him a truck or the equivalent of a truck in money.[15]

Maisu's testimony

Annette Maisu was an assistant field contsruction engineer for Bechtel, who was assigned to investigate and provide a response to a corrective action report (C.A.R.) regarding the "P" number incident. A C.A.R. is a document issued by quality assurance that documents an irregularity requiring an answer from the engineering department. She obtained background information from the quality assurance personnel, interviewed the employees,

15) Vealey denied he had been given a truck or anything else of value. The receipt of the truck issue apparently arose in the context of Vealey's termination and subsequent reinstatement in 1978. Vealey was terminated for destroying company property, which he purportedly did out of anger at his not being chosen for a foreman position. Although his termination notice stated he was not reeligible for rehire for the length of the project, he was rehired earlier since, according to Bechtel management, the union was having trouble supplying the needed quantity of workers, and thus terminated employees were given amnesty. Vealey had filed a grievance regarding his 1978 termination, but he denied he was given back pay or a truck as a result.

and went into the containment building to see the weld. She gave her response to Steve Boesel, project field engineer, who was acting as her supervisor on the matter.

Her response concluded the absence of a "P" number was not a major significant safety violation, it was a matter of minor concern, and would be so addressed.[16] Boesel reviewed her response and took it away from her. Following the submission of her response, a different response was prepared by Boesel with her input, since they had to "get a response that was acceptable." The second response was much shorter and said words to the effect that the procedural problem would be corrected. Boesel omitted Maisu's statement that the absence of a "P" number was not a major safety violation. Maisu felt they were intimidated about the problem with Slayton.

She later unsuccessfully sought to obtain a copy of her original response on two occasions—

16) Maisu testified the weld in question was not a safety significant weld. Although it was located in the containment building, and thus by definition was a safety related weld, in actual use it was a non-safety weld since it was on a stairwell outside of the containment.

According to Molnar and George, the weld involved in the incident was a safety related weld, which meant it was associated with a pipe support that had been designated as critical or important to the safe operation of the plant, particularly during an emergency when the plant must be shut down without danger of radiation to the public.

she looked in Boesel's office and asked him for a copy; and she went to the building where the project was centered and was told if she set foot in the building again she would be terminated.

ANALYSIS

On appeal, Bechtel does not dispute there is sufficient evidence to support a jury finding there was an agreement that Slayton, an employee with a long and largely satisfactory work history and on a career track with Bechtel, would not be terminated except for good cause.

Liability for wrongful termination of an "at will" employee arises when there is an express or implied promise of permanent employment and to terminate only for good cause, and the employee is discharged without good cause. (**Foley v. Interactive Data Corp.** (1988) 47 Cal.3d 654, 700.)[17]

The plaintiff may establish wrongful termination by showing the employer's stated reason for the termination was merely a pretext for a firing based on other, improper motives. (See **Crosier v.**

17) An "at will" employee is one whose employment is for an indeterminate term. (**Foley v. Interactive Data Corp.**, **supra**, 47 Cal.3d at p. 665.)

United Parcel Service, Inc. (1983) 150 Cal.App.3d 1132, 1138-1139.)[18]

In determining what constitutes good cause for the termination of at will employees, the courts have cautioned that care must be taken not to interfere with the legitimate exercise of managerial discretion. (**Pugh v. See's Candies, Inc.** (1981) 116 Cal.App.3d 311, 330; **Crosier v. United Parcel Service, Inc., supra**, 150 Cal.App.3d at pp. 1139-1140; **Clutterham v. Coachmen Industries, Inc.** (1985) 169 Cal.App.3d 1223, 1227.) Regarding managerial employees, "good cause" has been interpreted as allowing the employer substantial scope for the exercise of subjective judgment. (**Pugh v. See's Candies, Inc., supra**, 116 Cal.App.3d at p. 330.)

18) The recent California Supreme Court decision, **Foley v. Interactive Data Corp., supra**, 47 Cal.3d at page 682 eliminates liability for termination premised on tortious breach of the implied covenant of good faith and fair dealing, while allowing liability based on breach of contract. Although the existence of "pretext" has been used by the appellate courts to establish tort liability, pretext is also relevant to breach of contract liability, since evidence of pretext could establish lack of good cause. The **Foley** decision, rendered after the trial in this case, expressly declines to decide its retroactivity. (**Id.** at p. 700, fn. 43.) As we explain below, our analysis of the record uncovers no substantial evidence of pretext so as to undermine the evidence of good cause. Since we affirm the judgment notwithstanding the verdict, we need not reach the issue of **Foley**'s retroactivity.

In granting a judgment notwithstanding the verdict, the trial court cannot weigh the evidence or judge the credibility of witnesses; and it, as well as this court on appeal, must view the evidence and draw all reasonable inferences in favor of the jury's verdict. (**Hauter v. Zogarts** (1975) 14 Cal.3d 104, 110-111.) If there is any substantial evidence in support of the jury's verdict, the motion for judgment notwithstanding the verdict must be denied. (**Ibid.**) We must determine if there is substantial evidence to support the jury's verdict, which includes an award of punitive damages.

First, we evaluate whether there is any solid evidence of pretext so as to support the jury's verdict of wrongful termination based on lack of good cause. Stated differently, we evaluate whether any arguable evidence of pretext does not rise above speculation or conjecture, so as to support the trial court's judgment notwithstanding the verdict.

In his brief on appeal, Slayton primarily focuses on an argument Bechtel fired him based on a charge he falsified records, knowing in fact it was Vealey, not he, who falsified the rod room documents. The record refutes this argument. Once the investigation of the incident began, Bechtel was informed of Slayton's position that, contrary to the suggestion in Vealey's nuclear safety concern, Slayton only authorized Vealey to place his "P" number on the weld, and he was ot involved in the

WR6 form falsification.[19] Although Bechtel may have broadly interpreted Slayton's request that Vealey place his "P" number on the weld as constituting an act of "falsification of documents," the record does not indicate Bechtel was accusing Slayton of directing Vealey to falsify the WR6 form. We reject Slayton's argument of pretext in this regard.

Slayton also argues Vealey had some kind of power over Bechtel, and Bechtel fired Slayton to appease Vealey, not because Slayton's conduct warranted termination. With this argument in mind, and resolving all conflicts and drawing all inferences in favor of the jury's verdict, we summarize the evidentiary items which could be construed as relevant to the pretext issue.

Cazares had warned Vealey that Slayton might fire him for poor job performance. Vealey had told Cazares he knew how to make the powers at San

19) John Sneeringer of the quality assurance department interviewed Slayton on August 15 and documented Slayton's position that Vealey falsified the rod papers without Slayton's knowledge or direction. Molnar met with Sneeringer regarding his interview with Slayton and also personally interviewed Slayton and heard his explanation. We note various quality assurance documents generated during the course of the investigation refer generally to the fact that the welder falsified documents, without stating whether or not Slayton directed the falsification. However, these latter documents do not indicate Slayton ordered anything other than marking the "P" number on the weld, nor were they used to accuse Slayton of directing the falsification of the WR6 form.

Onofre toe the line—i.e. he had sued them and once they found out what he knew, he got a truck (or money) out of the deal. Vealey originated the idea to falsify the WR6 form. Slayton was not informed of Vealey's falsification of the WR6 form, and Vealey lied in his nuclear safety concern when he wrote it in a manner to suggest Slayton knew about the entire scheme. At his exit interview, Vealey indicated Slayton was not qualified to supervise welding, and he threatened to go to the NRC if he was not rehired. Project superintendent George told Slayton the matter was political, and it was best he be suspended until the whole thing blew over. During a second interview with quality assurance, Vealey again threatened to go to the NRC, and Reinsch asked Vealey if he wanted Slayton's job. The engineering department (based on Maisu's original report) perceived the "P" number incident as of minor significance, but was intimidated into writing a report which did not reflect that conclusion. No one else involved in and knowledgeable of the incident at the time it occurred (i.e. the rod room engineers, general foreman Cazares, Vealey) were terminated.

Regarding the role of Vealey in the incident, the evidence can reasonably support an inference Vealey wanted Slayton fired and "set him up" to commit the procedural violation: (1) because Vealey knew Slayton was dissatisfied with his job performance and might fire him; and (2) because

Vealey did not feel Slayton was qualified to oversee welding operations.

However, we are unable to draw the necessary inference Vealey was in a position of being able to influence Bechtel management to fire Slayton for reasons independent of Slayton's own misconduct. Vealey's testimony indicates he made a threat to go to the NRC on August 10 to Voight of quality assurance, and again on August 18 to Reinsch of quality assurance. The jury could have inferred that because Vealey threatened to go to the NRC if he was not rehired and/or if he was not satisfied with the investigation, he also threatened to go to the NRC if Salyton was not fired. Nevertheless, the fact the NRC was in fact apprised of Vealey's complaints on August 30, at a meeting with Reinsch and Edison representatives, on its face undermines the reasonableness of an inference Bechtel management was motivated to fire Slayton to keep the NRC uninformed.

Further, even if we draw the inference Molnar knew Vealey had made a threat to go to the NRC if Slayton was not fired, and did not know the NRC was to be informed in any event,[20] we are still un-

20) Apparently neither Reinsch nor Molnar were asked if they knew Vealey had made the NRC threat. Nevertheless, the jury could have credited Vealey's testimony he made the statement to Voight and Reinsch. Both Reinsch and Molnar testified they did not communicate with each other about the investigation and decision to terminate Slayton. Their testi-

able to find evidence which suggests Molnar, or anyone else in management, did not want the NRC to know about the safety complaints. Although it is not unreasonable to assume, based on the inherent nature of business, that Bechtel might have wanted to conduct its own investigation and take appropriate action (i.e. fire the employee responsible for the violation), so as to avoid an independent investigation by the NRC, this motivation cannot be characterized as wrongful. That is, it was legitimate for Bechtel to terminate the employee responsible for the misconduct, regardless of whether it was motivated by an independent concern for safety, or motivated by a desire to satisfy the NRC and avoid any delay or other negative ramifications which might arise from an NRC investigation.

mony indicates, however, that they both had discussions about Vealey's complaints with McCluskey, who was Bechtel's project manager responsible for overall management and for communication between Bechtel and Edison. Thus, arguably an inference could be drawn that Molnar, via McCluskey, was told about Vealey's NRC threat to Reinsch. The record indicates Molnar knew Vealey believed Slayton was not qualified for his job, since Molnar reviewed the document summarizing Vealey's exit interview with quality assurance, where Vealey made that assertion. Molnar testified he decided to terminate Slayton on August 28. The meeting with the NRC was not held until August 30, and Molnar testified he did not know if the NRC knew about Bechtel's investigation. Thus, an inference could be drawn that Molnar knew Vealey wanted Slayton fired, and knew Vealey was threatening to go to the NRC, but did not know the NRC was informed of the complaints.

We cannot assume Bechtel wanted to hide the complaint from the NRC, absent some evidentiary facts pointing in that direction. Slayton has not provided us, nor has our review of the record revealed, any such evidence. Indeed, the only evidence points in the opposite direction; i.e. Bechtel and Edison met with and informed the NRC about the complaint and the result of the investigation. Slayton did not call the NRC representatives as witnesses to refute this testimony, and there is nothing in the record which undermines its veracity. Since no evidence points to a cover-up of safety violations when Bechtel was conducting its investigation, and since Bechtel informed the NRC of the complaints after the investigation, the inference cannot be drawn Bechtel fired Slayton to accommodate Vealey so he would not complain to the NRC.

An argument could be made that Bechtel decided to appease Vealey by firing Slayton as a preventative measure—i.e., to satisfy Vealey so he would not pressure the NRC to conduct its own independent investigation of his safety concerns rather than relying on Bechtel's investigation, or so he would not alert the NRC of other safety concerns that might have existed. However, we can find no evidence in the record to support an inference Bechtel believed Vealey had a basis to make such assertions. Indeed, when Vealey was laid off in De-

cember, there is no evidence he raised additional safety concerns, or complaints about inadequate earlier investigations, as a way to force Bechtel to reemploy him; rather he merely asserted his whistleblower status attained in August 1984 via the "P" number incident.

A glimmer of evidence can be extrapolated from Reinsch's question to Vealey if he wanted Slayton's job. Reinsch's testimony shows that he, as quality assurance engineer, to some extent participated in discussions with Bechtel management, Edison, and the NRC regarding the incident. An inference could be drawn that Reinsch was questioning Vealey in order to determine what it would take to satisfy Vealey. However, as we have stated, the record does not show Bechtel management had any motive to silence Vealey as to his safety concerns; to the contrary, the NRC was informed about his complaints. In the absence of evidence suggesting Bechtel wanted the NRC kept uninformed, the single evidentiary item of Reinsch's question as to whether he wanted Slayton's job is not enough to support an inference of Bechtel's motive to silence or appease Vealey.

Also too attenuated is the inference Slayton argues should be drawn from Vealey's statement he received a truck or money from Bechtel, and made them "toe the line" when they found out "what he knew." This statement apparently referred to his re-

hiring after his termination in 1978 (see fn. 15, **ante**). It is too speculative to infer that because Vealey may have succeeded in pressuring Bechtel in 1978, he maintained some kind of influence over them in 1984, when there is no other evidence to support that inference.

Regarding the merits of the decision to terminate Slayton, the record can support an inference that from an engineering/safety perspective his procedural violation was a minor one, but Bechtel management wanted this conclusion suppressed so that it could not be used to challenge Slayton's termination, since it needed to fire someone for "political" reasons (i.e., based on Maisu's testimony plus George's statement the matter was political). That is, Bechtel could have wanted to make a showing to Edison and/or the NRC that it was strict on safety so as to avoid further investigations and interference with its operations. The inference could be drawn that if not for political pressure to have a safe nuclear power plant, Bechtel would not have felt the need to issue the drastic sanction of termination for what could be perceived as a minor procedural violation.

However, this type of "political" motivation cannot be characterized as wrongful. The motivation to fire an employee because of pressure to respond to an incident that affects nuclear safety is valid; it is not a wrongful "political" motivation in the sense of

an act arising from motivations such as favoritism, or power or personality conflicts. Thus, as we discussed above, even if Bechtel management really fired Slayton because it was under pressure from Edison and the NRC to strictly implement its quality control program, and not because Bechtel on its own was stringently concerned about safety, this is not the kind of "pretext" which constitutes wrongful termination, if in fact safety concerns were present. It was legitimate for management to reject a report which characterized a violation as minor, when the policy was to require strict adherence to all quality control procedures, and deviation therefrom could therefore ot be considered a minor matter.

Further, although Slayton was the only employee fired of all those involved in the wrongdoing, he cannot be characterized as having been unfairly made a "scapegoat," since he was at the top of the management hierarchy (i.e. above Cazares and Vealey) who authorized the violation of the "P" number procedure. Even though the rod room engineers were also responsible for inspection and they wrongfully issued the rod and approved the weld, they nevertheless were not the source of the authorization. Finally, even if Vealey planted the idea in his head, Slayton made a conscious choice to bend the rules.

Having concluded there is no substantial evidence of pretext, we see no inferences in the record

to undermine the evidence of good cause. The record indisputably shows management had a legitimate reason for terminating Slayton based on his admitted act of authorizing a welder to place his "P" number on a weld he did not perform. The "P" number notation was used as an inspection device to maintain the quality of welding by holding the welder who did the actual work accountable, thereby allowing identification of welders whose work was inadequate. The purpose of the "P" number procedure was thwarted by placing a mark of another welder, especially when the original weld papers could not be found, since such an act interferred with accurate identification of the welder who did the work. Even if the violation was minor in terms of its actual effect on safety, the evidence does not suggest management acted unreasonably in determining strict adherence to all quality control procedures was required, especially in the context of a nuclear power plant, and violation of a long-standing and well-known procedure warranted termination. Under these circumstances, the jury cannot interfere with the exercise of legitimate employer judgment.

Slayton points to the incongruity between Bechtel's act of firing him, with its act of rehiring Vealey, the latter who indisputably engaged in deceitful conduct. Although the result (justified by Vealey's whistleblower status) seems unfair, it does

not establish legal liability for Slayton's termination. Bechtel had legitimate reasons to terminate both Slayton and Vealey; the fact that for other reasons (whistleblower concerns) it made a decision not to terminate Vealey, does not eliminate the good cause for Slayton's termination.

Finally, we can draw no inferences of breach of contract based on Molnar's testimony suggesting the possibility he might not have fired Slayton if Slayton had admitted his wrongdoing rather than seeking to justify the violation. As we have stated, it was not unreasonable for management to require strict adherence to procedure in the context of nuclear safety, and thus an assessment the employee did not understand the importance of this strict adherence established good cause for termination.

Given our holding that the trial court properly entered a judgment in favor of Bechtel notwithstanding the jury verdict, we need not address its granting of the new trial motion.

DISPOSITION

The judgment notwithstanding the verdict is affirmed.

WORK, Acting P.J.

WE CONCUR:

HUFFMAN, J.

FROEHLICH, J.

APPENDIX C

AMENDMENT VII
UNITED STATES CONSTITUTION

"In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law."

APPENDIX D

CALIFORNIA CODE OF CIVIL PROCEDURE
Section 629

§629. Judgment Notwithstanding Verdict.

The Court, before the expiration of its power to rule on a motion for a new trial, either of its own motion after five days' notice, or on motion of a party against whom a verdict has been rendered, shall render judgment in favor of the aggrieved party notwithstanding the verdict whenever a motion for a directed verdict for the aggrieved party should have been granted had a previous motion been made.

A motion for judgment notwithstanding the verdict shall be made within the period specified by

§659 of this code in respect of the filing and serving of notice of intention to move for a new trial. The making of a motion for judgment notwithstanding the verdict shall not extend the time within which a party may file and serve notice of intention to move for a new trial. The court shall not rule upon the motion for judgment notwithstanding the verdict until the expiration of the time within which a motion for a new trial must be served and filed, and if a motion for a new trial has been filed with the court by the aggrieved party, the court shall rule upon both motions at the same time. The power of the court to rule on a motion for judgment notwithstanding the verdict shall not extend beyond the last date upon which it has the power to rule on a motion for a new trial. If a motion for judgment notwithstanding the verdict is not determined before such date, the effect shall be a denial of such motion without further order of the court.

If the motion for judgment notwithstanding the verdict be denied and if a new trial be denied, the appellate court shall, when it appears that the motion for judgment notwithstanding the verdict should have been granted, order judgment to be so entered on appeal from the judgment or from the order denying the motion for judgment notwithstanding the verdict.

Where a new trial is granted to the party moving for judgment notwithstanding the verdict, and the

motion for judgment notwithstanding the verdict is denied, the order denying the motion for judgment notwithstanding the verdict shall nevertheless be reviewable on appeal from said order by the aggrieved party. If the court grants the motion for judgment notwithstanding the verdict or of its own motion directs the entry of judgment notwithstanding the verdict and likewise grants the motion for a new trial, the order granting the new trial shall be effective only if, on appeal, the judgment notwithstanding the verdict is reversed, and the order granting a new trial is not appealed from or, if appealed from, is affirmed. Leg.H. 1923 p. 750, 1935 ch. 722, 1937 ch. 551, 1951 ch. 801, effective January 1, 1952, 1961 ch. 604, 1963 ch. 205.

Ref.: Cal. Fms Pl. & Pr., "Assault and Battery," "Judgments," "Motions After Trial"; W. Cal. Pro., "Trial" §§159, 160, 440, 441.

APPENDIX E

CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 659

§659. Notice of Motion—Filing and Service, Time—Contents—Extension of Time.

The party intending to move for a new trial must file with the clerk and serve upon each adverse party a notice of intention to move for a new trial, designating the grounds upon which the motion will be made and whether the same will be made upon affidavits or the minutes of the court or both, either

1. Before the entry of judgment; or

2. Within 15 days of the date of mailing notice of entry of judgment by the clerk of the court pursuant to §664.5, or service upon him by any party of written notice of entry of judgment, or within 180 days after the entry of judgment, whichever is earliest; provided, that upon the filing of the first notice of intention to move for a new trial by a party, each other party shall have 15 days after the service of such notice upon him to file and serve a notice of intention to move for a new trial.

Said notice of intention to move for a new trial shall be deemed to be a motion for a new trial on all the grounds stated in the notice. The time above

specified shall not be extended by order or stipulation or by those provisions of §1013 of this code which extend the time for exercising a right or doing an act where service is by mail. Leg.H. 1872, 1874 p. 315, 1907 p. 717, 1915 p. 201, 1929 p. 841, 1951 ch. 801, 1959 ch. 469, 1961 ch. 604, 1965 ch. 1890, 1967 ch. 169, 1970 ch. 621.

Ref.: Cal. Fms Pl. & Pr., "Accounting, Action for," "assault and Battery," "Motions After Trial," "Reference," "Reformation of Instruments," "Rescission and Restitution"; W. Cal. Pro., "Courts" §249.

APPENDIX F

AMENDMENT V
UNITED STATES CONSTITUTION

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation."

APPENDIX G

AMENDMENT XIV
UNITED STATES CONSTITUTION

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the

proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions

of this article. (Note: Section 1. has been changed by section 1. of the twenty-sixth amendment prohibiting the right of citizens who are eighteen years of age or older to be denied or abridged on account of age.)"

APPENDIX H

Foley v. Interactive Data
(1988) 47 Cal.3d 654
254 Cal.Rptr. 211

APPENDIX I

CALIFORNIA CODE OF CIVIL PROCEDURE
Section 630

§630. Directed Verdict.

(a) Unless the court specified an earlier time for making a motion for directed verdict, after all parties have completed the presentation of all of their evidence in a trial by jury, any party may, without waiving his or her right to trial by jury in the event the motion is not granted, move from an order directing entry of a verdict in its favor.

(b) If it appears that the evidence presented supports the granting of the motion as to some, but not all, of the issues involved in the action, the court shall grant the motion as to those issues and the ac-

tion shall proceed on any remaining issues. Despite the granting of such a motion, no final judgment shall be entered prior to the termination of the action, but the final judgment, in addition to any matter determined in the trial, shall reflect the verdict ordered by the court as determined by the motion for directed verdict.

(c) If the motion is granted, unless the court in its order directing entry of the verdict specifies otherwise, it shall operate as an adjudication upon the merits.

(d) In actions which arise out of an injury to a person or property, when a motion for directed verdict was granted on the basis that a defendant was without fault, no other defendant during trial, over plaintiff's objection, shall attempt to attribute fault to or comment on the absence or involvement of the defendant who was granted the motion.

(e) The order of the court granting the motion for directed verdict is effective without any assent of the jury.

(f) When the jury for any reason has been discharged without having rendered a verdict, the court on its own motion or upon motion of a party, notice of which was given within 10 days after discharge of the jury, may order judgment to be entered in favor of a party whenever a motion for directed verdict for that party should have been granted had a previous motion been made. Except

as otherwise provided in §12a, the power of the court to act under the provisions of this section shall expire 30 days after the day upon which the jury was discharged, and if judgment has not been ordered within that time the effect shall be the denial of any motion for judgment without further order of the court. Leg.H. 1947 ch. 984, 1967 ch. 625, 1986 ch. 540.

Ref.: W. Cal. Pro., "Trial';' §408.

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF RIVERSIDE)

I am a citizen of the United States and a resident of the County aforesaid; I am over the age of eighteen years and not a party to the within entitled action; my business address is 9016 Mission Boulevard, Riverside, California 92509.

On September , 1989, I served the within APPENDICES TO PETITION FOR WRIT OF CERTIORARI VOLUMES I AND II on the interested parties in said action, by placing a true copy in each of two (2) sealed evelopes, with postage thereon fully prepaid, in the United States mail at San Bernardino, California, addressed as follows:

Walter A. Stringfellow
Donald A. Newman
Thelen, Marrin, Johnson & Bridges
333 South Grand Avenue
Suite 3400
Los Angeles, CA 90071

Attorney General
For the State of California
110 West A Street
Suite 700
San Diego, CA 92101

I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED on September , 1989, at Riverside, California.

JACK GALLAGHER